

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHEASTERN DIVISION

Eric J. Rudolph,

Petitioner,

-vs-

Don Redmann,

Respondent.

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Case No. 3:11-cv-80

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

The Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending that Plaintiff's Complaint be dismissed with prejudice for failure to state a claim upon which relief can be granted (Doc. #5). Plaintiff did not file any objections to the report within the requisite time period.

The Court has reviewed the Report and Recommendation, along with the entire file, and finds the Magistrate Judge's position is correct. Accordingly, the Court hereby adopts the Report and Recommendation in its entirety. For the reasons set forth therein, Petitioner's Complaint is **DISMISSED** with prejudice.

The Court finds that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis. Based upon the entire record before the Court, dismissal of the motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. *See, Tiedemann v. Benson*, 122 F.3d 518, 252 (8th Cir. 1997) (finding that a district court possesses the authority to issue certificates of appealability under Section 2253(c)). If the

Rudolph desires further review of his petition, he may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with *Tiedemna v. Benson*, 122 F.3d 518, 250-252 (8th Cir. 1997).

**IT IS SO ORDERED.**

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated this 18th day of October, 2011.

/s/ Ralph R. Erickson  
Ralph R. Erickson, Chief Judge  
United States District Court